

LIONEL, SAWYER, & COLLINS  
Rodney M. Jean, Nev. Bar #1395  
1700 Bank of America Plaza  
300 S. Fourth Street  
Las Vegas, NV 89101  
Direct Dial: 702-383-8830  
Fax: 702-383-8845  
rjean@lionelsawyer.com

ATTORNEYS FOR PLAINTIFF  
SHAKOPEE MDEWANKANTON SIOUX COMMUNITY

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

SHAKOPEE MDEWAKANTON SIOUX  
COMMUNITY,  
a Federally Recognized Indian Tribe  
  
Plaintiff,  
  
vs.  
  
FBCV, LLC, a Nevada Limited Liability  
Company; KEN TEMPLETON, Trustee of  
the Templeton Gaming Trust, a Nevada Trust;  
TEMPLETON GAMING CORPORATION, a  
Nevada Corporation; and TEMPLETON  
DEVELOPMENT CORPORATION, a  
Nevada Corporation  
  
Defendants.

**Case No. 2:10-cv-00010 (JCM-RJJ)**

**FINAL JUDGMENT AND  
PERMANENT INJUNCTION**

On June 29, 2011 the Court entered an Order [Docket No. 86] granting Plaintiff SMSC's motion for summary judgment on the issue of trademark infringement and injunctive relief. "Injunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by defendant's continuing infringement." Bellagio v. Denhammer, 2001 WL 34036599, \*6 (D. Nev. July 10, 2001)(citing Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175 (9th Cir.1988); 15 U.S.C. § 1116; Blumenfeld Dev. Corp. v. Carnival Cruise Lines, Inc., 669 F.Supp. 1297, 1321 (E.D. Pa., 1987) ("Injunctions are appropriate in trademark cases where the reputation of the senior user 'is left to the mercy of the junior user, whose business policies may not reflect the same sound judgment.'").

A party seeking a permanent injunction must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. Kerzner Int'l. Ltd. v. Monarch Casino & Resort, Inc., 675 F.Supp.2d 1029, 1045 (D.Nev. 2009)(citing eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (9<sup>th</sup> Cir. 2006).

### ***1. Irreparable Harm***

"In the trademark context, 'once the plaintiff establishes a likelihood of confusion, it is ordinarily presumed that the plaintiff will suffer irreparable harm if injunctive relief is not granted.'" Id. (citations omitted); (see also Brookfield Comm. Inc. v. West Coast Ent. Corp., 174 F.3d 1036, 1066 (9th Cir. 1999); Caesars World, Inc. v.

1 Milanian, 247 F.Supp.2d 1171, 1205 (D. Nev. 2003) (“Having concluded that Plaintiffs  
2 have succeeded on proving infringement, the Court need not address the issue of  
3 irreparable harm . . . once trademark infringement is established through a showing of a  
4 likelihood of confusion, irreparable injury is presumed.”); Competition Specialties, Inc.  
5 v. Competition Specialties, Inc., 2004 WL 94026, \*2 (9th Cir. Jan. 20,  
6 2004)(injunctive relief is the “remedy of choice” for trademark infringement, and  
7 “there is no adequate remedy at law for the injury”).  
8  
9

10 The Court has concluded that confusion is likely. This factor weighs in favor of a  
11 permanent injunction.

## 12 **2. *Balance of the Equities***

13 Where a plaintiff has “established that they have invested millions of dollars  
14 promoting [its] marks . . . the balance of the equities weighs in favor of enjoining  
15 defendant[s] from further unlawful use.” Milanian, 247 F.Supp.2d at 1205.  
16

17 Plaintiff asserts that it has invested millions of dollars and many years in  
18 maintaining and protecting the name Mystic Lake, Mystic, and all of the Mystic family of  
19 marks. The Defendants have not attempted to rebut this evidence. Accordingly, the  
20 Court concludes that this factor favors a permanent injunction.

## 21 **3. *The Public Interest***

22 “An important factor in protecting trademarks is to avoid consumer confusion,  
23 which is in the public interest.” Milanian, 247 F.Supp.2d at 1205. “It is in the public  
24 interest not to allow [defendant] to mislead the public into thinking that the services  
25 offered by [defendants] are somehow related to the Plaintiffs when in fact they are not.  
26  
27  
28

1 Enjoining defendants from further display or future use of the marks is necessary to  
2 prevent consumer confusion.” Id. The Court has concluded that confusion is likely.  
3 This factor weighs in favor of a permanent injunction. Accordingly, IT IS HEREBY  
4 ORDERED ADJUDGED AND DECREED that, pursuant to 15 U.S.C. § 1116,  
5 Defendants, their successors, officers, parents, subsidiaries, affiliates, agents, assigns  
6 and employees, and anyone acting in concert with or at the behest or direction of  
7 Defendants, jointly and severally, are hereby PERMANENTLY ENJOINED AND  
8 RESTRAINED from the following:  
9

11 (a) Distributing, displaying, marketing, promoting, offering for sale, and/or  
12 selling any goods or services using the mark Mystic Lodge Casino, or any other  
13 phrase, slogan, or business name that incorporates the word “Mystic” (a “Mystic  
14 Mark”);  
15

16 (b) Affixing a Mystic Mark to any product, advertisement, point of sale  
17 material, interior/exterior signage or other promotional material;

18 (c) Disseminating any product, advertisement, point of sale material,  
19 signage or other promotional material containing or incorporating a Mystic Mark;  
20

21 (d) Registering any domain name which includes the word “mystic” or any  
22 Mystic Mark; and

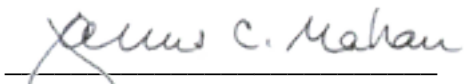
23 (e) Registering and/or applying for any trademark registration for a Mystic  
24 Mark.  
25  
26  
27  
28

1  
2 IT IS FURTHER ORDERED that, within sixty (60) days of the date this Order  
3 becomes effective, Defendants their successors, officers, parents, subsidiaries,  
4 affiliates, agents, assigns and employees, and anyone acting in concert with or at the  
5 behest or direction of Defendants, shall remove from any Internet website all  
6 references to Mystic Lodge Casino and/or any other Mystic Mark.  
7

8 IT IS FURTHER ORDERED that, within sixty (60) days of the date this Order  
9 becomes effective, Defendants shall submit all necessary papers to complete a  
10 transfer of all Internet domain names which include the Mystic Lodge Casino mark,  
11 any Mystic Mark, or any variation thereof, to SMSC.  
12

13 IT IS FURTHER ORDERED that, within sixty (60) days of the date this Order  
14 becomes effective, Defendants shall provide written confirmation to counsel for  
15 SMSC that neither they nor their successors, officers, parents, subsidiaries, affiliates,  
16 agents assigns and employees, and anyone acting in concert with or at the behest or  
17 direction of Defendants, are displaying the mark Mystic Lodge Casino or any Mystic  
18 Mark.  
19  
20  
21

22 Dated: July 25, 2011  
23

24   
United States District Judge  
25  
26  
27  
28

1  
2  
3  
4 Dated: July 18, 2011

**FAEGRE & BENSON LLP**

5 By: s/ Timothy J. Cruz  
6 Jonathan W. Dettmann  
7 Timothy J. Cruz  
8 2200 Wells Fargo Center  
9 90 South Seventh Street  
10 Minneapolis, MN 55402  
11 Tel.: (612) 766-8049  
12 Fax: (612) 766-1600  
13 tcruz@faegre.com

14 LIONEL, SAWYER, & COLLINS  
15 Rodney M. Jean, Nev. Bar #1395  
16 1700 Bank of America Plaza  
17 300 S. Fourth Street  
18 Las Vegas, NV 89101  
19 Direct Dial: 702-383-8830  
20 Fax: 702-383-8845  
21 rjean@lionelsawyer.com

22 **ATTORNEYS FOR PLAINTIFF**  
23 **SHAKOPEE MDEWAKANTON**  
24 **SIoux COMMUNITY**  
25  
26  
27  
28